

Upper Clark Fork River Basin Steering Committee
Meeting Summary
October 31, 2008

Introductions

Gerald Mueller, members of the Upper Clark Fork River Basin Steering Committee (Steering Committee), and others in attendance introduced themselves. Those in attendance included:

Members	Group/Organization Represented
Bob Benson	Clark Fork Coalition
Jim Dinsmore	Granite Conservation District
Tom Mostad	Natural Resources Damage Program
Senator Dave Lewis	Lewis and Clark County/Senate District 42
Jules Waber	Powell County
Holly Franz	PPL Montana
Mike McLane	Montana Department of Fish, Wildlife and Parks (DFWP)
Rep. Jon Sesso	Butte-Silverbow

Agency Personnel

Kim Overcast	New Appropriations Manager, Montana Department of Natural Resources and Conservation (DNRC)
Mike Roberts	Surface Hydrologist, DNRC

Public

Darry Barton	Clark Fork River Technical Advisory Committee
Maureen Connor	Granite County Commissioner
Renee Myers	Executive Director, Watershed Restoration Coalition

Staff

Gerald Mueller	Facilitator
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Agenda

- Review summary of the September 24, 2008 Meeting
- Updates
 - Basin Domestic Water Supply
 - Granite County's FERC Application
 - DNRC Staff Liaison with the Steering Committee
 - ARCO/DFWP Water Right Changes
- DNRC Historical Consumptive Use Methodology
- Watershed Restoration Coalition Activities
- Work Plan Topics
 - Water Right Claim Issue Remarks
 - "On-the-ground" challenges to water administration
- Public Comment
- Next Meeting

September 24, 2008, 2008 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

Basin Domestic Water Supply - Gerald Mueller reported on two subjects related to this topic. First, the contract between the DNRC and the University of Montana for the study of the status of the water rights for municipal water supplies in the upper Clark Fork River basin has been signed. The period of the contract is October 1, 2008 through March 29, 2009. Second, Mr. Mueller received a copy of a letter from Bill Schultz, DNRC's Missoula Water Resources Regional Manager, concerning the Big Sky Lake Homeowners Association's water right permit application. The Association applied for a permit for a new domestic water use on properties along the shoreline of Big Sky Lake. Mr. Schultz' letter terminated the application because it did not use an accepted method for estimating surface water flow rates and volumes for the diversion for the new water use and because the application provided no description of the operation plan for the domestic use.

Granite County's FERC Application - Granite County Commissioner Maureen Connor provided the update. Two months ago, the firm seeking to reinstall hydropower generation associated with the Flint Creek Dam filed an application with the Federal Energy Regulatory Commission (FERC) for a license to do so. FERC responded promptly by sending the applicant a letter spelling out deficiencies in the application. The hydropower contractor has told Granite County that he is not concerned about the specified deficiencies and expected to respond to FERC with the requested information. Two entities have commented to FERC on the application. Montana Trout Unlimited has asked that the new license include the flow provisions in the previous Montana Power Company hydropower license to ensure that the project maintains historic flows in Flint Creek. The United States Fish and Wildlife Service (USFWS) requested additional information about the impacts of the proposed hydropower re-installation on two endangered species, bull trout and the gray wolf. Granite County would have a minimal participation in the operation of the hydropower generation facility. It would either have a small ownership share or take a small fee on the hydropower generated.

Comment - This project would likely qualify as a renewable energy resource under the state law that requires Montana investor-owned utilities to purchase a certain portion of their electricity supplies from renewable resources according to a prescribed schedule.

Response - The provisions of the state law referenced are important to the success of this project.

Question - Did Granite County recently have Flint Creek Dam inspected for safety?

Answer - Yes. Because its failure might result in loss of human life, Flint Creek Dam is considered a high hazard dam. This classification does not mean that the dam is in danger of failing; rather it means that it must undergo a safety inspection by an engineer every five years. Annual inspections can be made by the dam owner or operator. Granite County has hired the same engineer that did the most recent five-year inspection to do this year's inspection. The inspection report should be available in the next couple of months.

Question - What is the connection of the dam to wolves?

Answer - Georgetown Lake sits partially on United States Forest Service (USFS) land. As the owner of the dam, the county must pay a special use fee to the USFS. The involvement of federal land creates the connection to the endangered species.

DNRC Staff Liaison with the Steering Committee - The DNRC has hired Ann Schwend to fill the Water Planner position that Curt Martin formerly occupied. She will be the DNRC liaison with the Steering Committee. Ms. Schwend had been the Watershed Coordinator for the Ruby Watershed Council. She begins her new position on November 17, 2008.

ARCO/DFWP Water Right Changes - Mike McLane stated that ARCO's attorney Matt Williams is attempting to bring the processes involving ARCO's and DFWP's change application together. To do so, ARCO intends either to ask that the DNRC hearing on ARCO's application be delayed, or, if a delay is not granted, to pull its application and refile it so that DFWP's and ARCO's proposed water right changes can be considered together.

DNRC Consumptive Use Methodology

Kim Overcast and Mike Roberts from DNRC discussed the department's efforts at developing a methodology to assess historic consumptive water use. This assessment is necessary when an application is filed with DNRC for a change of use permit. DNRC can grant a change only for that portion of a water right that was historically consumed and only if the change would not adversely affect any existing water rights. The applicant bears the burden of proving that the change would not adversely affect on any existing water right holder. In the past, DNRC has not had a specified methodology for calculating historic use to apply when an applicant lacked documentation of it. The DNRC regional water resource offices sometimes approached the calculation differently. DNRC has also been criticized for requiring too much documentation for an application for a change to a pre-1973 right. To resolve this issue, the department worked with a 23 member advisory committee to develop a methodology for determining historic consumptive use. It has held public meetings in Lewistown, Missoula, and Helena on the proposed methodology. The proposal was discussed at the September Steering Committee meeting. It is available at: dnrc.mt.gov/wrd/pdfs/CU_draft-9_08_08.pdf. After DNRC has evaluated responses to the proposed methodology, the department will decide whether and how to incorporate it into a proposed rule which will subject to a formal public process.

Mike Roberts explained the proposed methodology using a power point presentation.

Question - What does full service mean in the context of a water right?

Answer - It means applying the maximum flow rate required throughout the period of use to meet the full demand of the crop.

Comment - In making water right decrees enforceable, the Water Court is changing the period of use.

Response - We cannot speak to Water Court decisions.

Question - In authorizing a change, can DNRC protect return flows?

Answer - No. DNRC can issue changes only for the consumption portion of a water right necessary to provide the specified beneficial use.

Comment - You note that since 1973 crop yields have increased per unit of irrigation water applied. However, you will use the default methodology only for pre-1973 water rights. Assuming six inches of water per ton of alfalfa and using county wide average crop production will penalize efficient agriculture producers who use less water per ton of crop produced and reward less efficient producers.

Response - The 1973 cutoff date results from the 1973 Water Use Act. Prior to its passage, a water user did not have to get a permit to obtain a water right or to change to an existing right, and irrigators often did not maintain records about crop yield per unit of the water applied. We have developed this methodology as a default when applicants do not have detailed information demonstrating their water use efficiency. If applicants can demonstrate their historic consumptive use is greater, we will use this information rather than the default methodology.

Comment - I am confused about the purpose of the methodology.

Response - It applies only for change of use permit applications and when applicants do not have information pertaining to the historic consumptive use (pre-1973).

Comment - It appears that by using this approach, DNRC is in effect capping existing water rights. If a user changes his delivery method and in so doing must apply for a change permit, his or her water right will end up being reduced.

Response - Our intent is to specify a simple, but credible default methodology for cases when detailed water use and crop production data are not available. Our objective is to protect existing users by not allowing changes to increase water consumption above historic levels. DNRC already examines historic consumptive use with change applications and this approach just provides a tool to do that if no other adequate data is presented. Also, we are not “capping” existing water rights with this approach. Since the passage of the Montana Water Use Act, water users have always been held to their historic consumptive use (pre-1973).

Question - Does a change from flood to sprinkler irrigation require a change permit?

Answer - A change from flood to sprinkler would not require a permit if the acres irrigated remain the same and the point of diversion is unchanged.

Watershed Restoration Coalition Activities

Renee Myers, Executive Director of the Watershed Restoration Coalition (WRC), summarized WRC's existing and proposed projects. The projects include:

- The East Valley Project - This project was targeted at improving water quality on Clark Fork River tributaries in the eastern portion of the Deer Lodge Valley by moving cattle and roads out of riparian areas. Wells and pipelines were constructed to provide an alternative source for stock watering outside of the riparian area.
- The East Valley Forest Stewardship Project - This project recently completed a landscape analysis that the Pintler Ranger District of the United States Forest Service will use as the basis of an environmental impact statement for forest stewardship projects on 40,000 acres east of Deer Lodge.
- Cottonwood Creek Education Center and Johnson Creek Recreation Trails - This is an education project targeted at school children and others using the trails within the town of Deer Lodge. New trails are being constructed and a new education center is being built.

- The Browns Gulch Pilot Restoration and Education Project - This project includes riparian fencing and planting in the riparian area along Browns Gulch to improve water quality and provide education about stream restoration.
- Gold Creek - This project is aimed at improving water quality in Gold Creek by building fence to keep cattle out of the riparian area, replacing 233 acres of flood irrigation with center pivot sprinkling system, remove 25.5 acres from production for wildlife habitat, and relocating a feed lot from stream channel.
- Cottonwood Creek - This project includes a flow study to determine base flow in the creek, an irrigation diversion study to determine barriers to reconnecting the creek to the Clark Fork River, an entrainment study to identify fish losses, and an outreach and coordination with landowners to develop future projects.
- Deer Lodge to Garrison Trail - This project would create a recreational trail from Garrison to Deer Lodge.
- Future projects - These include a Clark Fork TMDL, a Watershed Restoration Plan, the Browns Gulch Implementation, and creation of an Upper Clark Fork Fisheries and Habitat Committee.

The WRC recently received funding from DEQ to develop a watershed restoration plan for all of the tributaries in the upper Clark Fork basin. It is therefore seeking groups who would participate in this effort. The WRC also seeks to create a committee to address fishery and habitat projects in the upper Clark Fork.

Question - What is the area for the Clark Fork TMDL?

Answer - The area included was Hoover Creek to Willow Creek, i.e. the Willow Creek that combines with Mill Creek and Silver Bow Creek to form the Clark Fork River. The TMDL addresses metals, nutrients, and sediments. It does not address stream flow.

Question - How would the shut down of Sun Mountain affect the East Valley Forest Stewardship Project?

Answer - Would from this project could be shipped to other timber mills than Sun Mountain.

Question - Would your work in Browns Gulch benefit Silver Bow Creek?

Answer - It might. We may seek a water lease on Browns Gulch and move surface water uses to wells.

Comment - You mentioned collaborating with other groups. There is a Butte Restoration Alliance that you may want to contact.

Response - I will do so.

Comment - The Steering Committee has attempted to focus on the mainstem of the Clark Fork River. We have been interested in the possibility of reconnecting cut off ox bows to the mainstem. We have also monitored flows in the Racetrack to Sager Lane reach which is the most heavily dewatered stretch of the mainstem. We have identified options for increasing instream flows in this reach and recently working with the Westside Ditch Company on a successful project development grant to the NRD Program to identify alternatives involving this Ditch that would increase flows in the mainstem. The Steering Committee also has devoted much attention to water right issues and may be able to work with the WRC in this area.

Work Plan Topics

In addition to the status of the basin communities' municipal/domestic water supplies, Steering Committee members suggested the following topics for its 2008-2009 work plan.

- Decree issue remarks - Mike McLane stated that he has not yet had time to pursue this topic with the Attorney General's Office and DNRC.
- "On-the-ground" challenges to water administration - Gerald Mueller passed out a list of questions that he is considering using in interviews with water commissioners on three of the following drainages: Flint Creek, Racetrack Creek, Dempsey Creek, Willow Creek, Nevada Creek, and Union Creek. See Appendix 1. Once the interviews are completed and summarized, this experience can be compared with how water is administered in other states.

Comment - Rather than Union Creek, you might consider Three Mile Creek, which is the source of irrigation for Jim Quigley.

Comment - We have not had a commissioner on Flint Creek for a couple of years.

Comment - Randy Hawkins manages water on Nevada Creek and would be an excellent person to interview.

Comment - I have some additional questions to add to your list. I will email them to you.

Public Comment

There was no public comment.

Next Meeting

The next meeting was scheduled for Wednesday, January 14, 2009 in Helena. A representative of the Montana Water Court will be invited to discuss how water right decrees will be integrated.

Appendix 1
Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
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Missoula, MT 59801
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MEMORANDUM

Date: October 20, 2008
To: Upper Clark Fork River Basin Steering Committee
From: Gerald Mueller
Re: "On-The-Ground" Challenges To Water Administration Work Plan Topic

At our meeting on September 24, the Steering Committee agreed to add to its work plan consideration of the "on-the-ground" challenges to water administration. We discussed examining two or three basin drainages with water commissioners to see how water is being administered and comparing this experience with how water is administered in other states. The candidate drainages included: Flint Creek, Racetrack Creek, Dempsey Creek, Willow Creek, Nevada Creek, and Union Creek.

Before contacting the water commissioners, I want to discuss with you the questions that I will ask them to be sure that I am on the right track. My suggested questions are:

- What is the basis for your administration of water, a water rights decree or some other agreement or document?
- Which specific decree or other agreement or document do you use?
- For how long has the water in your drainage been administered in this way?
- How long have you acted as the water commissioner?
- How did you come to play this role?
- Have you sought technical assistance in administering water, and if you have, from whom have you sought it?
- What determines when you start administering water each year?
- How do you carry out your work as the water commissioner?
- Would you please describe a typical day administering water?
- What challenges have you experienced in your role as a water commissioner?
- Have you had conflicts with individual water users in administering water, and if you have, how did you resolve them?
- Do you foresee something that will or would make your job as a water commissioner easier or harder?
- How will completion of the adjudication affect your actions as a water commissioner?
- Are you compensated for your work as a water commissioner, and if you are, how is the compensation determined?
- Do you have any recommendations for changing the way water is administered?